

CALIFORNIA COASTAL COMMISSION

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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.:	1-01-027
APPLICANT (S):	Clarence Westbrook and Harry Wetherell
AGENT (S):	Pacific Affiliates, Inc.
PROJECT LOCATION:	The upstream portion of the Woodruff Gravel Bar in the Smith River, 1.5 miles downstream from the Dr. Fine Bridge (US 101), in the Smith River Area of Del Norte County. APNs 105-020-02, -03, & -21.
PROJECT DESCRIPTION:	Seasonal extraction of up to 60,000 cubic yards of river-run gravel per year over a five-year period, with the 2001 operation season limited to 12,220 cubic yards extracted from four 200-ft. x 20-ft. x 15-ft "dry" trenches.
PLAN DESIGNATION:	RCA-1, General Resource Conservation Area.
ZONING:	RCA-2(r) & (e), Designated Resource Conservation Area – riparian and estuary.
LOCAL APPROVALS RECEIVED:	Del Norte County Use / Coastal Development Permit No. UP8969, renewed for five years on March 7, 2001, and annual mining plan authorization for 2001 season, issued July 11, 2001.

OTHER APPROVALS RECEIVED: California Department of Fish and Game Sec. 1603 Streambed Alteration Agreement; U.S. Army Corps of Engineers Letter of Modification to Permit No. 21534N; State Lands Commission trust lands review; and California Department of Conservation - Office of Mine Reclamation reclamation plan review.

SUBSTANTIVE FILE DOCUMENTS: Smith River Gravel Study, California Department of Water Resources, January, 1974; Programmatic Mitigated Negative Declaration Del Norte County Programmatic Mitigated Negative Declaration for Gravel Extraction on the Lower Smith River and Rowdy Creek, July, 2000; Biological Opinion – U.S. Army Corps of Engineers Letter of Permission Procedure to Permit Gravel Mining in Del Norte County, California, National Marine Fisheries Service, September, 2000; and Results of Salmonid Surveys for Gravel Extraction Operations, Smith River, Del Norte County, Galea Wildlife Consulting, January, 2001.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve with conditions the coastal development permit for sand and gravel extraction for a one-year period only. The applicants propose to extract gravel on a seasonal but on-going basis for a five-year period from a gravel bar along the lower Smith River from a site located approximately 1½ miles downstream from the Highway 101 (Dr. Fine Bridge) crossing. The current application specifically seeks to authorize extraction for a five year period with a provision for limited “dry trenching” extraction during the 2001 extraction season that has been previously authorized by the California Department of Fish and Game and the U.S. Army Corps of Engineers (USACOE).

The Commission has previously granted a five-year permit to the applicant in 1995 (CDP-1-95-16) and a one-year permit in 2000 (CDP 1-00-005). The reduction in development authorization in 2000 was based on the concern that issuance of a permit for a full five-year period would not be prudent as biological information on the effects of continued gravel mining on endangered salmonid species was outstanding. Although such information was being gathered by the national Marine Fisheries Service (NMFS) in anticipation of a renewal to the USACOE’s Letter of Permission for gravel mining on the Smith River, the information gathered to date did not support approval of mining

activities beyond the immediate extraction season. Without this information, and in the absence of any other information that demonstrates that gravel extraction in future years would not result in significant cumulative or individual adverse impacts to threatened or endangered fish species that cannot be mitigated, the Commission was unable to find that gravel mining in future years was consistent with the Coastal Act. With regard to the current application, although some information has been gathered to-date, a full re-assessment of the effects of gravel mining on the ecology of Smith River is on-going. In addition, since issuance of the permit for the 2000 mining season, the California Fish and Game Commission has accepted a petition for listing the coho salmon under the California Endangered Species Act. While in candidacy, the Department of Fish and Game will initiate a 12-month review of the species' status to determine whether the species should be listed as threatened or endangered. The review involves a broad inquiry into and evaluation of available information, and solicited data and comments on the proposed listing based upon the best scientific information available. Accordingly, information is still lacking that would demonstrate that gravel extraction in years beyond 2001 would not result in significant cumulative or individual adverse impacts to threatened or endangered fish species that cannot be mitigated. Consequently, staff has recommended that the permit be once again limited to a one-year term, concurrent with the remaining term of the USACOE's Letter of Permission (LOP).

Gravel mining for this year is addressed under the existing LOP and the biological opinion prepared by NMFS. The Biological Opinion concludes that gravel mining pursuant to the LOP through this season is not likely to jeopardize the continued existence of endangered salmonids. This opinion provides evidence that appropriately conditioned gravel mining will not result in significant adverse cumulative impacts on endangered salmonids. In addition, the specific plan for dry trenching this year has been reviewed and approved by NMFS, the California Department of Fish and Game and Fish and Game, and the County of Del Norte, providing further evidence that the proposed mining for 2001 will not result in significant adverse impacts that cannot be mitigated.

In addition to limiting the development authorization to the immediate 2001 extraction season, measures to prevent disturbances to both riverine and terrestrial habitat have been recommended. Special Condition No. 1 includes limits on the size and location of the extraction trenches to avoid stream capture and other channel morphological changes, restrictions on the use of heavy equipment to avoid accidental spills or releases of oils and petroleum products into the river, and requires that runoff control best management practices be identified to prevent impacts to the river from turbid water generated during trench extraction.

In recognition of the fact that areas of the bar contain very young vegetation that has not developed to the point where it provides appreciable habitat value, and that the Coastal Act defines environmentally sensitive areas in such a way as to only include riparian vegetation with habitat value, Special Condition Nos. 1 and 4 do not ban extraction in all areas containing vegetation, but only those areas where the riparian vegetation has

reached a size and extent where there is an expectation of appreciable habitat values for nesting, forage and cover of wildlife being afforded.

In developing the recommended conditions, staff has considered the requirements imposed on the applicants by other regulatory agencies, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the California Department of Fish and Game, and the County of Del Norte's reviewing hydrologist.

As conditioned and limited to a one-year authorization period, staff believes that the proposed project is fully consistent with the Coastal Act.

STAFF NOTES

1. Jurisdiction and Standard of Review

The site of the proposed surface mining project is within a gravel bar within the Smith River, 1.5 miles downstream of the State Highway 101 bridge. The project is located within the Coastal Commission's area of original or retained jurisdiction (see Exhibit No. 3). The standard of review is the applicable Chapter 3 policies of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-01-027 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of the majority of the Commissioners present.

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit, subject to the conditions specified below, for the proposed development on the grounds that, as conditioned, the development will be in conformity with the policies of Chapter 3

of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or (2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See attached.

III. SPECIAL CONDITIONS:

1. Revised Plans Condition

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-01-027, the applicant shall submit revised plans for the 2001 extraction season to the Executive Director for review and approval. The revised plans shall show the following mining limitations and changes to the project:

1) Mining Operations Plan

- a. The permittee shall extract material only by “dry longitudinal trenching” in a manner approved by the California Department of Fish and Game, Army Corps of Engineers, and National Marine Fisheries Service. The permittee may designate four (4) trenches measuring no more than 200 feet in length with unexcavated areas measuring no less than 50 feet between each trench. Each trench shall have a buffer of no less than five (5) feet from the edge of the existing river edge as designated by staking and flagging required under the U.S. Corps of Engineers Letter of Permission and California Department of Fish and Game Streambed Alteration Agreement.
- b. The permittee may excavate each trench to a width of 20 feet, and to a maximum depth of 15 feet. The operator shall then slope the gravel bar side of the trench to a 1:1 slope, utilizing that extracted gravel in the process.
- c. The permittee shall extract no more than: (1) 12,220 cubic yards of gravel from the site.
- d. Excavation activities shall not occur in the active channel (except for related placement of sedimentation berm structures authorized

by this permit and the California Department of Fish and Game) and shall be limited to exposed river bar areas a minimum of five (5) feet horizontally from the current water's edge.

- e. Gravel extraction operations shall not be conducted within the first 300 feet of the upstream point of the bar.
- f. Gravel extraction operations shall not disturb or remove any of the riparian vegetation on the river banks or along the northeast flank of the bar delineated as "persistent Palustrine Scrub-Shrub habitat type" (PSS1-2, within the "Westbrook Gravel Bar Vegetation Assessment" (NMRC, 4/11/00), which includes all riparian vegetation that is part of a contiguous complex of 1/16 acre or is one-inch or larger DBH.
- g. Gravel extraction operations shall not disturb or remove any of the riparian vegetation within the gravel bar delineated as "non-persistent Palustrine Scrub-Shrub habitat type" (NPSS1-2, within the "Westbrook Gravel Bar Vegetation Assessment" (NMRC, 4/11/00), which includes all riparian vegetation that is part of a contiguous complex of 1/16 acre or is one-inch or larger DBH.
- h. Gravel operations shall be designed to avoid significant adverse effects to any state or federally listed rare, endangered or threatened species that is discovered at the project site during the life of the permit.
- i. During all operations, the permittee shall properly maintain all equipment so that no petroleum products are spilled or leaked in the river. If a spill occurs, the permittee shall immediately begin clean-up procedures and immediately contact the Commission.
- j. It is anticipated that each trench will fill with subsurface water percolating through the gravels. The permittee shall ensure that the excavation procedure not allow turbid water in the trenches to enter the flowing river. A berm shall be constructed utilizing gravel from the authorized trenches. The berm shall be maintained during trenching along the entire length of the excavated area to prevent turbidity by keeping the flowing river separate from the excavation area.
- k. After completion of gravel extraction operations, the permittee shall allow the turbid water in the trenches to completely settle and then shall excavate a breach of each trench to the main channel of

the river both at the upstream and downstream ends. The permittee shall maintain a supply of absorbent pads at the worksite and shall place them on the impounded water while the turbidity is settling to any minor amount of petroleum product from the water surface before removing the barrier at each site. The operator shall make each breach at least 10 feet wide and at least 5 feet deep with sloped sides with a minimum of 1:1 slope.

2. Runoff Control Plan

- a. The runoff control plan shall demonstrate that:
 - (1) During permitted mining, runoff from the site shall be controlled to avoid adverse impacts on coastal resources; and
 - (2) A suite of the following temporary erosion and runoff control measures, as described in detail within in the "California Storm Water Best Management Commercial-Industrial and Construction Activity Handbooks, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force, shall be used during mining: Brush or Rock Filter (ESC53), Spill Prevention and Control (CA12), Vehicle and Equipment Fueling (CA31), Vehicle and Equipment Maintenance (CA32), and Employee / Subcontractor Training (CA40).
- b. The plan shall include, at a minimum, the following components:
 - (1) A narrative report describing all temporary runoff control measures to be used during mining;
 - (2) A site plan showing the location of all temporary runoff control measures; and
 - (3) A schedule for installation and removal of the temporary runoff control measures.

- B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Extraction Season / Termination of Gravel Extraction Operations.

The gravel extraction authorized by this permit shall terminate on October 1, 2001. Continued gravel operations after that date shall require a new coastal development

permit. All re-grading required by Special Condition No. 3 must be completed by October 15, 2001.

3. Seasonal Site Closure.

The excavation area must be closed by October 15, 2001. Closure includes the breaching of the excavation trenches, grading the excavation site breaches according to prescribed 1:1 grade, sloping upward toward the gravel bar, removing all access roads, seasonal crossings and/or culverts, and grading out the seasonal crossing abutments and turbidity control berm to conform with the surrounding topography. All materials used in the operation other than sand and gravel materials from the gravel bar used for crossings and berms shall be removed entirely from the river channel; and placed only where they cannot enter coastal waters.

4. Resource Protection.

The gravel extraction and processing operations shall not disturb or remove any of the established riparian vegetation habitat along the banks of the river, nor any of the riparian vegetation areas on the gravel bar limited by Special Condition No. 1. No new haul roads shall be cut through the habitat. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete, oil or petroleum products, or any other organic or earthen materials from any gravel extraction (or reclamation activities) shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into river waters.

5. Dust Abatement.

The permittee shall regularly water the dirt access road through the use of a water truck where the road passes through and along the riparian corridor on the north bank of the Smith River.

6. Seasonal Crossings.

The permittee shall install either a temporary flatcar bridge or a series of temporary culverts where the gravel bar access road crosses the overflow channel that is usually dry during the extraction season to permit the flow of water in the event of unexpected high water flows during the extraction season. If a flatcar is used, the permittee shall install it at such a height that it will not impede water flow during the intended operational period of the extraction. If culverts are used, the permittee shall install at least four 24-inch diameter culverts, side by side, placed at the existing stream grade and properly aligned with the existing streamflow. The permittee shall use a rubber-tired loader to access the gravel bar across the overflow channel of the river and may use gravel bar material to construct the access road.

7. Permit Amendment.

Any proposal to take more than the maximum permitted 12,200 cubic yards of materials, to take more than the amount of gravel sufficiently replenished by the river the preceding high flow season, to increase the size of the permitted area, to extract in a manner contrary to the extraction limitations set forth in Special Condition No. 1, to install either culverted or railroad flatcar seasonal crossings, or to make other changes to the proposed operation shall require an amendment to this permit.

IV. FINDINGS AND DECLARATIONS.

A. Site Description.

The project site comprises the upstream portion of the Woodruff Gravel Bar, located in the bed of the Smith River about 1.5 miles downstream and west of the Highway 101 crossing (Dr. Fine Memorial Bridge) in Del Norte County (see Exhibit Nos. 1 and 2). Together with the “lower Woodruff Bar,” this depositional feature is also known as the “Crockett Bar.” The Woodruff/Crockett Gravel Bar is one of five gravel bars that are located within the coastal zone along the lower reaches of the Smith River. The lower Smith River flows through a broad alluvial floodplain that is extensively used for agriculture. The project site is within the area of Commission’s retained permit jurisdiction and is not governed by the certified LCP. Lands adjacent to the project site have land use plan designations of Prime Agriculture and Resource Conservation Area (AE, RCA), implemented through a Designated Resource Conservation Area – Estuary (RCA-2 (e)) zoning district.

In its present configuration, the perennial main channel of the Smith River runs along the western side of the Woodruff Bar with a seasonal channel flanking its eastern side. The seasonal channel is dry during the summer and early fall gravel extraction season. Access to the gravel bar is via an unimproved gravel road that crosses the seasonal channel and ascends the riverbank to a levee road leading to Fred Haight Drive. An approximately 4-acre (300-ft. x 600-ft.) cleared and graded stockpiling area lies off of the access road approximately 250 feet from the riverbanks (see Exhibit No. 4).

From bank to bank, the river is about 600-700 feet wide in the area of Woodruff Bar. However, during the summer and early fall months when low flow conditions prevail, the river is confined to a main channel of approximately 100 feet in width. The banks of the river are 20-30 high and are covered with well established riparian vegetation dominated by a Sitka willow (Salix sitchensis) and red alder (Alnus rubra) plant community. These dominants are interspersed with tan oak (Lithocarpus densiflora) and firs (Abies sp.), with an understory composed primarily of Himalaya blackberry (Rubus discolor), California blackberry (Rubus ursinus), French broom (Genista monspessulana), coyote brush (Baccharis pilularis), and various forbs, ferns and upland grasses.

The proposed gravel extraction area on the upper portion of Woodruff Bar is approximately 1,680-feet-long by 350-feet-wide. The applicants have mined this reach only sporadically, with approximately 80,000 cubic yards of aggregate harvested over the last two years, within the permitted 60,000 cubic yards/year limit imposed by permitting agencies. Recent and past volumetric assessments (Larue, 1997, 1998, 1999) indicate that in previous years, in excess of 60,000 cubic yards of material was available within the proposed extraction area. However, due to low rainfall during the 2000-01 winter months and a corresponding drop in river flows, little replenishment of the Woodruff Bar has occurred since last year's mining season. Accordingly, for extraction during the 2001 season, the mining area has been reduced to a 950-feet-long by 35-feet-wide linear band along the downstream side of the bar adjacent to the river's main channel, in which four 200-foot-long trenches would be placed.

The proposed gravel extraction areas were the subject of a wetlands investigation conducted in July, 1995, by Karen Theiss and Associates, Biological and Environmental Consultants. An updated vegetation assessment for the project site was prepared by Natural Resources Management Corporation (NRMC) in April, 2000 and January, 2001. Among other observations, these investigations note that the bar is subject to hydrologic scouring during high flow periods over the winter and early spring seasons during normal rainfall years. This regime causes vegetative cover on the site to be limited to low-water vegetation characterized mostly by herbaceous and scattered young willows.

The riparian vegetation found on the gravel bar consists of two plant associations, a permanent palustrine scrub-shrub complex encompassing three contiguous acres along the northeastern side of bar. In addition, six acres of non-persistent palustrine scrub-shrub complex occur in four discrete areas on the northwest, east, and southeast sides of the bar. These areas range in size from approximately ½-acre to 2½ acres in size and contain riparian vegetation, chiefly small Sitka willows (*Salix sitchensis*), with ½-inch to one-inch stem diameters-at-breast-height (see Exhibit No. 5).

B. Project Description.

The applicants request to seasonally remove up to 60,000 cubic yards of river-run sand and gravel aggregates annually over a five year period from an approximately 14-acre extraction area within the upper Woodruff Bar. For extraction after the 2001 season, extraction would be accomplished through bar "skimming," where bands of bar materials are shallowly scraped by mechanized equipment, such as excavators, bulldozers or front-end loaders. The materials would be loaded onto dump trucks and transported to the designated stockpile area for further processing (i.e., screening, crushing). In addition, bar skimming may be augmented by trenching extraction in the interest of enhancing river channel passage and habitat utilization for fish and other wildlife. Trenching would be subject to specific design and oversight by the California Department of Fish and Game (CDFG).

Because of the 2000-01 low rainfall year, very little replenishment of sand and gravel materials occurred along the lower Smith River gravel bars, including the subject Woodruff Bar site. With a lack of recruitment of river aggregates, further skimming of the exposed bar surface has not been authorized by either CDFG or the County for the 2001 extraction season. Additional lowering of the gravel bar would reduce the confines on the current channel configuration that could result in significant changes in river morphology, leading in turn to impacts to sensitive habitat area in and along the river, and to adjacent farmlands.

Consequently, the applicants have proposed to extract a reduced amount of sand and gravel during the 2001 mining season by trenching rather than skimming. The applicants propose to use a modified trenching technique, designed in consultation with the CDFG. Instead of trenching conducted within an impounded area encompassing the shallow waters adjacent to the gravel bar as has been utilized at certain times in the past, "dry trenching" entails trenching completely outside submerged areas within the exposed gravel bar. Under the applicants' proposal, four, 200-foot-long trenches, spanning 20 feet in width, and extend to a 15-foot depth would be excavated a minimum of five feet from the wetted river's edge. Each trench would be separated from the next by a 50-foot-wide "leave strip" in which no excavation would occur. The purpose of these leave strips is to break the excavation area into a series of cells such that potential stream capture or other changes in channel morphology are not instigated by the presence of a long, uninterrupted trench. In addition, the outboard side of the trench (i.e., away from the river, towards the bar) would be graded to a 1:1 slope to prevent erosion of the bar edge. Materials from the graded trench wall could also be used as extracted sand and gravel. Based upon a volumetric quantification, the resulting trapezoidal extraction area would yield a total of approximately 12,220 cubic yards of sand and gravel materials.

Following the end of the extraction season in October, each trench would be breached toward the main river channel on its downstream and upstream ends, once the sub-surface water that seeped into the trenches during mining has been allowed to settle. This action is required under the CDFG Streambed Alteration Agreement to avoid turbid water discharges and to prevent stranding of fish when the river level recedes in late Spring. In addition, the trench breaches are similarly required to be sloped to provide a means for trapped animals to escape. (Note: In the early-1990s, a horse fell into and became trapped within the near vertical walls of a former mining trench on the Mad River. With no way to extricate itself, the horse subsequently drowned.)

A channel crossing is not necessary to gain access to the bar because the secondary channel that separates the bar from the bank is dry in the summer. However, the CDFG Streambed Alteration Agreement requires that either a span or culverted crossing be installed in case unexpected major rainfall occurs during the extraction operation and water actually begins to flow again in the secondary channel. The applicant has the option of installing a railcar spanning the channel at such a height as to allow for the free flow of river water through the secondary channel, or a series of four 24-inch-diameter

culverts placed parallel with the direction of flow. It should be noted that access to the gravel bar extraction site does not require a crossing of the river's main channel. Accordingly, unimpeded access down the river would continue to be available for kayakers and other boaters transiting this reach.

C. Project History / Extraction Methodologies.

Commercial sand and gravel mining has been undertaken at the Woodruff Bar site since the early 1970's, with smaller scale extraction along the lower Smith River document back to 1914. The proposed project seeks reauthorization of an ongoing gravel extraction operation that the Commission last approved in September 2000 under Coastal Development Permit No. 1-00-005. Coastal Development Permit No. 1-00-005 authorized gravel extraction for one-year, expiring on February 1, 2000. Previously, under Coastal Development Permit Nos. 1-95-16 (1995-2000) and 1-89-157 (1990-1995), mining had been authorized for five years.

The applicants are requesting to generally remove the same amount of gravel per year that was previously approved. However, acknowledging the lack of recruitment of sand and gravel during the 2001-01 winter that would make further bar-skimming problematic, "dry trenching" is proposed during the 2001-02 extraction season. With the exception of this change, the proposed operation for 2002 through 2006 is effectively identical to those previously authorized since the late 1980's in terms of requested extraction quantities, operational areas, and removal methodologies.

The project requires a coastal development permit from the Commission because the gravel bar is located within the Commission's area of original or retained permit jurisdiction (see Exhibit No. 3). The project before the Commission calls for removing sand and gravel only from the bar. All processing and stockpiling of the excavated materials will be done away from the gravel bar and outside of the Coastal Commission's permit jurisdiction. The project requires a separate coastal development permit from Del Norte County for temporarily stockpiling and processing the materials at an upland portion of the applicants' property. The local coastal development use permit was approved by the County in February, 2000, and extended in March, 2001 for a five-year period to match that requested from the Commission. The project was not appealed to the Commission. The applicants have also obtained an annually renewable, five-year County use permit for the entire project (i.e., extraction, stockpiling, and processing). The local coastal development / use permit is subject to the County's annual review process commencing on February 1st of every year.

Gravel bar extraction operations are seasonal activities. The gravel extraction season usually runs from July 1st to October 15th of each year based on the CDFG's annual Streambed Alteration Agreement, pursuant to Section 1603 of the California Fish and Game Code. This period of time coincides with low water conditions on the river when substantial portions of the gravel bars are exposed and are above the live waters of the

river. Mining is to cease on October 1st, with the remaining two weeks utilized to remove all mining equipment, conduct all required reclamation practices and winterize the site.

In the past, the applicants have taken gravel from the Woodruff Gravel Bar using skimming operations, trenching operations, or a combination of both methods. The skimming method is the traditional method of taking gravel from river bars. Gravel removal by skimming occurs outside of the low-flow channel of the river. In skimming operations at the site, the operator skims gravel from the top of the bar in a manner that creates a shallow-sloped plain rising gently back from the river to the landward edge of the bar. Gravel removal equipment includes front-end loaders, scrapers, pushcats, excavators, or equivalent equipment. Gravel is transported from the extraction site by dump trucks or off-road trucks and stockpiled on the upland portion of the subject property. After completion of gravel extraction operations, the applicants return the gravel bar to a smoothly graded condition, sloping toward the main channel at no less than a two-percent grade, and without any pits, potholes, trenches, mounds, or stockpiles to prevent the creation of fish traps.

The applicant proposes that it be allowed to perform wet trenching within the live channel of the river in extraction seasons after 2001 in instances where gravel recruitment has not been sufficient to provide for skimming of the bar and when the wet trenching has been approved by the Department of Fish & Game. Wet trenching operations have been proposed in the past to: 1) encourage future gravel recruitment; 2) increase the capacity of the low-flow channel; 3) create deep-water habitat for aquatic species; and 4) maintain the geomorphology of the river's bar and riffle, bank, and channel configuration. Trenching has been undertaken at the site as recently as 1996, and has resulted in geomorphic alterations beneficial to both gravel recruitment and aquatic habitat at the site. The National Marine Fisheries Service (NMFS) currently does not support wet trenching partly out of concern that excavation within the live channel may result in take of juvenile salmonids by the action of the equipment used to extract the gravel.

It should be noted that the CDFG Section 1603 Streambed Alteration Agreement for the most current extraction season (2001) limits the applicants to extraction by modified "dry" trenching only, where excavation would occur entirely outside of the wet channel on the dry gravel bar. Due to the lack of recruitment of aggregate materials onto the gravel bar during the 2000-01 rainy season, CDFG has authorized no skimming for the 2001 season. Similarly, under the emergency regulatory actions in place during the candidacy period for the coho salmon, CDFG has suspended authorization for all gravel extraction trenching methods, unless site-specifically approved in advance by the Department. The current dry trenching proposal was developed in consultation with CDFG and NMFS personnel during a field visit to the Woodruff Bar site on May 30, 2001. Concluding that the modified trenching would not likely jeopardize the continued existence of the threatened Southern Oregon / Northern California Coastal coho salmon, on July 2, 2001, CDFG issued Streambed Alteration Agreement No. 01-0183 (see Exhibit No. 6) for the requested trenching operation.

D. Smith River Resource Issues and Regulatory Background.

Resource Utilization

The Smith River has 11 gravel bars that have been mined on a regular or periodic basis. Five of these bars are located on the lower Smith River within the coastal zone (i.e., downstream of the Highway 101 / Dr. Fine Bridge). The gravel bars on the Smith River contain a renewable resource of cobbles, gravel, sand, and other rock-derived products. There has been an on-going demand for gravel and aggregate products within Del Norte County because of the construction of a variety of private developments and public facility improvements.

The Smith River and its tributaries are ranked among the most significant anadromous fisheries in Northern California. Chinook salmon (Oncorhynchus tshawytscha), coho salmon (Oncorhynchus kisutch), Klamath Mountain Province steelhead (Oncorhynchus mykiss irideus), and coastal cutthroat trout (Oncorhynchus clarki clarki) are among the most important species with regard to commercial and sports fisheries. The project area and the lower Smith River are mainly utilized by anadromous fish as a migration route to and from upstream spawning grounds. Most spawning areas along the lower Smith River have previously been lost due to sedimentation of this river system, although some main stem spawning use does occur by Chinook salmon.

In addition to the fish and wildlife habitat the river affords, the Smith River is also recognized for its significant recreational and aesthetic values. In 1972, the Smith River was included in the original listing of waterways under the California Wild and Scenic Act (PRC §5093.50 *et seq.*). The reach of river passing through the project site is classified as “recreational.” PRC Section 5093.53 defines recreational rivers or river segments as: “...those rivers or segments of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.” Restrictions on land uses along recreational rivers are not as stringent as those on their “wild” or “scenic” counterparts, and are primarily limited to prohibiting the construction of dams or other permanent diversion structures. The protection and enhancement of recreational uses are stressed with particular emphasis placed on ensuring that river front development does not block or impede recreational access within navigable waters.

The Smith River also provides domestic water supply to many residents of northern Del Norte County, including the City of Crescent City, the unincorporated town of Smith River, and Pelican Bay State Prison. Water is drafted from the river’s aquifer through subsurface “Ranney Well” pumps operated by the City of Crescent City and several other community services districts. The current (1997) water consumption rate is approximately 62 million gallons per month.

Regulatory Chronology

Beginning in 1975 with the adoption of the Surface Mining and Reclamation Act or “SMARA” (PRC §2710 *et seq.*), the regulation of gravel mining has been a steadily evolving process. Reauthorization and amendments to the Federal Clean Water Act (CWA) in the early 1990’s saw the U.S. Army Corps of Engineers (USACOE) becoming more actively involved in regulating many in-stream gravel operations under the auspices of the CWA Section 404 permit program. On March 28, 1997, the USACOE issued a Letter of Permission No. 96-2 for the Del Norte County in-stream gravel mining operations which established a programmatic framework of extraction performance standards alleviating the need for individual Section 404 permits. The Letter of Permission runs for a five-year period, expiring on March 22, 2002. The extent of the Corps’ CWA Section 404 authority with respect to in-stream gravel mining has subsequently been addressed and modified through several judicial rulings known as the “Tulloch Ruling Decisions.”

Until the 1990’s, there had been little coordinated review of the combined effects of the various gravel mining operations. An in-stream gravel mining operation can require the approval of a number of different agencies. Permits granted in the past by the various approving agencies were site-specific and granted with little acknowledgement of the cumulative effects of gravel mining.

By the late 1990’s the listing and candidacy of several anadromous salmonid fish species by the National Marine Fisheries Service (NMFS) resulted in habitat and incidental take consultation requirements under the Federal Endangered Species Act (FESA) to be applied to riverine activities such as gravel mining. These actions included the May 1997 listing of the Southern Oregon / Northern California Coastal (SONCC) coho salmon as a threatened species. On September 12, 1997, NMFS issued a Biological Opinion regarding the USACOE’s LOP, findings that the implementation of the Corps’ gravel mining letter of permission, which expires after the 2001 gravel extraction season, was not likely to jeopardize the continued existence of threatened SONCC coho salmon during the authorized period of mining.

In March 1998, the Klamath Mountain Province steelhead trout became a candidate for FESA listing. NMFS subsequently determined that listing the species was not warranted. In response to the designation of critical habitat areas for the SONCC coho salmon, on September 23, 1999, the USACOE requested NMFS to re-initiate consultation on the Corps’ Letter of Permission. NMFS contracted a study to review the efficacy of regulatory efforts to protect listed fish species to date. On September 5, 2000, NMFS issued its most recent Biological Opinion covering the 2000 and 2001 extraction seasons. The study concluded that the Corps’ gravel mining regulatory program was not likely to jeopardize the continued existence of threatened SONCC coho salmon during the authorized period of mining. Currently, NMFS is preparing for a consultation request it

is expecting from the Corps of Engineers to re-assess the effects gravel mining would have on FESA-listed species under its purview under a renewed Corps LOP for mining activities that would occur after March, 2002. It is likely that recommendations for more comprehensive habitat management measures may result which could affect standards for gravel mining operations.

Following the order issued by the County of Mendocino Superior Court on February on February 3, 1999, in Mendocino Environmental Center, EPIC, et al. v. California Department of Fish and Game, CDFG initiated changes in its Section 1603 Streamside Alteration Agreement process. The Department now conducts a tiered environmental review of such projects pursuant to the California Environmental Quality Act (CEQA).

Also in 1999, the County of Del Norte began updating its environmental documentation for the 11 Smith River gravel operations. A programmatic Mitigated Negative Declaration was adopted July 7, 2000. This document updates the previous project analyses conducted during the late 1980's and early 1990's, and incorporates mitigation and monitoring provisions in response to changes in regulatory programs, environmental review requirements, and federal and state threatened and endangered species listing (i.e., coho salmon, steelhead) which have occurred since their preparation. Under the current mitigation and monitoring programs assessments of river and habitat conditions are conducted annually to determine appropriate quantities and areas for extraction for the upcoming season. The information required under Special Condition No. 1 will be used in this process so as to better manage these renewable resources and avoid cumulative impacts to coastal resources.

On July 28, 2000, the California Fish and Game Commission (CFGC) received a petition from the Salmon and Steelhead Recovery Coalition to list the coho salmon north of San Francisco as an endangered species under the California Endangered Species Act (CESA). The petition described runs of coho as having declined 90 percent in the past 30 years, to stand at 1 percent of the historic levels. On April 5, 2001, the CFGC accepted the petition for listing and issued a Statement of Proposed Emergency Regulatory Action for the specie's 12-month candidacy period. During that period, the protection granted to listed species under the CESA is extended to candidate species, specifically prohibiting taking of the species without the express consent of CDFG. The CFGC statement included a provisional incidental take authorization for in-stream gravel mining operations (see Exhibit No. 6).

These developments have underscored how close multi-agency review coordination and a comprehensive approach to river management of in-stream surface mining projects may be the only way in which permitted operations will be sustainable in the future. To this end, beginning in the Spring of 2001, meetings between the various regulatory agencies involved in Smith River mining were initiated. The purpose of these workshops was to foster a greater understanding of the roles and concerns of each agency and to promote greater efficiency in the review and permitting of gravel mining proposals. Among

others, participants included staff from the USACOE, CDFG, NMFS, U.S. Fish and Wildlife Service, California Department of Conservation – Office of Mine Reclamation, County of Del Norte, City of Crescent City, the University of California – Seagrant Program, and the Coastal Commission.

E. Protection of Riverine Environment.

The proposed project involves the surface mining extraction of sand and gravel from the Smith River using heavy mechanized equipment for grading and dredging operations. Several Coastal Act policies address protection of the portion of the river environment below the ordinary high water mark from the impacts of development such as gravel mining. These policies include Sections 30231 and 30233. Section 30231 applies generally to any development in riverine environments and other kinds of water bodies in the coastal zone. Section 30233 applies to any diking, filling, or dredging project in a river and other coastal waters. Gravel extraction within a riverbed is a form of dredging within coastal waters.

Section 30231 of the Coastal Act states, in applicable part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes... shall be maintained and, where feasible restored...

Section 30233 of the Coastal Act states, in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subsection (b) of Section 30411, for boating facilities, including berthing areas turning basins, necessary navigation channels, or any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*

- (4) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities, and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
 - (5) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - (6) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (7) *Restoration purposes.*
 - (8) *Nature study, aquaculture, or similar resource dependent activities...* [emphasis added]
- (c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

The above policy sets forth a number of different limitations on what fill and dredging projects may be allowed in coastal waters. For analysis purposes, the limitations can be grouped into four general categories or tests. These tests are:

1. That the purpose of the fill and dredging is for one of the eight uses allowed under Section 30233;
2. That feasible mitigation measures have been provided to minimize the adverse environmental effects; and
3. That the project has no feasible less environmentally damaging alternative;
4. That the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

1. Permissible Use for Dredging of Coastal Waters

The first test set forth above is that any proposed fill, diking or dredging must be for an allowable purpose as enumerated under Section 30233 of the Coastal Act. The proposed project involves dredging for mineral extraction. Surface mining of gravel aggregate materials is specifically enumerated as a permissible use in the above-cited policy, provided the activity is not undertaken in environmentally sensitive areas; Section 30233(a)(6) allows dredging for mineral extraction, provided the activity is not undertaken in environmentally sensitive areas. Therefore, to the extent that the proposed gravel extraction will avoid environmentally sensitive areas, the proposed project is consistent with the use limitations of Section 30233(a)(6).

The proposed project has the potential to affect environmentally sensitive areas. A stand of mature riparian vegetation has established itself along the northeastern side of the Woodruff Gravel Bar. The riparian area is shrub-dominated by Sitka willow (Salix sitchensis), some Pacific willow (Salix lucida spp. lasianda), and a persistent herbaceous layer due to infrequent high water scour of the area. The height of the willows ranges from 10 to 30 feet, with trunk diameters of one to four inches. This area exhibits mid-seral characteristics of a developing stratified canopy offering potential forage and cover utilization by various riparian birds, amphibians, and small mammals.

The Coastal Commission has previously determined in numerous permit actions that most forms of riparian vegetation are environmentally sensitive. The Commission has consistently conditioned permits for development near such riparian woodlands along streams and rivers to avoid disturbances of riparian areas where mature vegetation exists.

The majority of the riparian coastal scrub-shrub vegetation on the gravel bar is inundated during high flows and is often uprooted and scoured by river flows. The hydrodynamics of the river can cause the channel itself to migrate over time, which in time can eliminate more stands of riparian scrub vegetation from one year to the next. As a result, much of the vegetation is young, having only grown a season or several seasons since the time of the last inundation severe enough to remove the plants previously growing there.

Given that some of this vegetation is very new and underdeveloped, it may not provide habitat values sufficient enough for the areas to be characterized as environmentally sensitive.

Section 30107.5 of the Coastal Act defines “environmentally sensitive area” as:

Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed or degraded by human activities and developments.

Under this definition, any area supporting a plant, animal, or habitat is environmentally sensitive if the area meets two main criteria: (1) the plant, animal, or habitat is either rare or of special value because of their unique nature or role in the ecosystem, and (2) the area could be easily disturbed or degraded by human activities and developments. The non-persistent scrub-shrub riparian areas clearly meet the second criterion in that the gravel extraction materials on the river bar, such as proposed by the applicant, can quickly obliterate any of this habitat the extraction activities comes in contact with. With regard to the first criterion, the riparian scrub-shrub vegetation is not rare, as it usually does not contain rare or endangered species and can be found extensively on the many gravel bars along North Coast waterways. In general, riparian vegetation must grow to a certain size and mass before it can begin to contribute significantly to the river ecosystem. A willow sprig growing in isolation that has just taken root and only rises a

few inches out of the ground cannot provide much forage area, nesting opportunities, or much screening from predators for birds and other animals who choose to use it. As the sprig grows taller, however, and as more riparian plants colonize the surrounding area, the sprig, and the plants now growing in association with it, can start to provide forage, nesting, and cover opportunities that make it especially valuable habitat and therefore an environmentally sensitive area.

There is no clear-cut answer to the question of just when in the growth and development of riparian scrub-shrub vegetation reaches the point where it can be considered environmentally sensitive. In discussions with CDFG staff, Commission staff has learned that no specific plant height and diameter, coverage, age, etc. thresholds exist for riparian vegetation that define when habitat value is sufficient to categorize the vegetation as environmentally sensitive. Part of the reason for this uncertainty is that there can be tremendous variability in the values of riparian vegetation of the same size from one location to the next depending on such factors as surrounding habitat and vegetation, surrounding land uses, river configuration, etc.

One existing standard that may provide useful guidance for determining when riparian scrub-shrub vegetation reaches the point of becoming environmentally sensitive is a standard imposed in the USACE Letter of Permission (LOP) Procedure authorizing gravel mining in Del Norte County. The LOP, which was first issued in 1997, was developed by the Corps after a number of interagency meetings and consultations with representatives of various state and federal agencies. The LOP sets a number of restrictions on the gravel extraction projects that it authorizes. One such restriction concerns riparian vegetation. The restriction states as follows:

All riparian and woody vegetation and wetlands must be avoided to the maximum extent possible. Any riparian vegetation or wetland that is to be disturbed must be clearly identified by mapping. Woody vegetation that is part of a contiguous 1/8-acre complex or is at least two inches in diameter breast height (DBH) must be mitigated if it is disturbed. Impacts to other woody vegetation must be described and a summary submitted to the corps with the gravel extraction plans. These impacts may require mitigation at the discretion of the Corps...

The restriction establishes a minimum threshold for when impacts to riparian vegetation must be mitigated. The threshold is reached any time the riparian area that would be disturbed contains woody vegetation that is part of a contiguous 1/8-acre complex or is at least two inches (2") diameter at breast height.

Under its administration of CWA Section 404 (and the related Section 10 of the Rivers and Harbors Act of 1899), the Corps does not limit mineral extraction in coastal wetlands and other coastal water bodies to the same extent that Coastal Act Section 30233 does. As previously stated, Section 30233(a)(6) only allows the dredge or fill of wetlands or

open coastal waters for mineral extraction if the mineral extraction occurs outside of environmentally sensitive areas. Thus, although the Corps can allow mineral extraction in an environmentally sensitive area so long as mitigation is provided, the Commission cannot allow mineral extraction within an environmentally sensitive area at all.

Thus, the purpose in determining when mitigation should be required is not the same as determining when riparian vegetation area reaches a level of growth and development such that it should be considered environmentally sensitive.

By requiring mitigation whenever a riparian vegetation area that is to be disturbed contains woody vegetation that is part of a contiguous 1/8-acre complex or is at least 2 inches DBH, the Corps' LOP indicates that vegetation at this level already is providing habitat value. Otherwise, if the vegetation were not providing habitat value there would be no need for mitigation. Therefore, the Commission finds that the riparian vegetation must reach a form of growth and development where it provides important habitat values at some point before the Corps' threshold is reached. Acknowledgement of this fact is contained in the rest of the Corps' standards which indicate that impacts to other woody vegetation not rising to the threshold level must also be described and submitted to the Corps and may require mitigation at the discretion of the Corps.

In discussions with CDFG staff, Commission staff has discerned that under average growing conditions, a willow tree that is one inch (1") in DBH or part of a contiguous 1/16-acre complex would likely have survived for one growing season. Given that riparian vegetation is only becoming established during the first growing season, the vegetation may not provide significant habitat value at this point. On the other hand, vegetation that has survived more than one growing season would be established and likely to be used by wildlife. Therefore, the Commission finds that the riparian scrub-shrub vegetation should be characterized as an environmentally sensitive area when the vegetation contains woody vegetation that is part of a contiguous complex of 1/16-acre or larger or is 1" or larger in DBH. In addition, by restricting extraction in vegetated areas that are essentially half as developed as the riparian vegetation for which mitigation is indicated under the Corps' LOP, the Commission will minimize the chances that any riparian vegetation providing significant habitat value will be disturbed by the proposed gravel extraction.

The proposed trenching operation for the 2001 gravel mining season would not be performed within any riparian area that is part of a contiguous complex of 1/16-acre or larger or which contains vegetation that is one inch in DBH or larger. In addition, as discussed in Findings Section IV.E.2, below, the project has been conditioned to not allow mining in future years. Therefore, as conditioned herein to reflect the proposed limitation on the effect of gravel extraction operations on riparian vegetation, the proposed gravel extraction operation is consistent with the use limitations of Section 30233 of the Coastal Act on dredging in coastal water bodies as the mining operation is

for mineral extraction in areas that are not environmentally sensitive, consistent with Section 30233(a)(6).

2. Feasible Mitigation Measures

The second test set forth by the dredging and fill policy of the Coastal Act is whether feasible mitigation measures have been provided to minimize the adverse environmental impacts of the proposed project.

Depending on the manner in which the gravel operation is conducted, the portions of the proposed project to be conducted below the ordinary high water mark could have four potentially significant adverse effects on the natural environment of the lower Smith River. These impacts include: (a) impacts on fisheries; (b) alteration of the riverbed and increased bank erosion; (c) impacts on environmentally sensitive riparian vegetation; and (d) impacts to the water quality of the river. The potential impacts and their mitigation are discussed in the following sections:

(a) Fisheries

As noted previously, the Smith River and its tributaries are ranked among the most significant fisheries in Northern California for anadromous species, including the coho salmon, listed in 1997 by the National Marine Fisheries Service as a “threatened” species pursuant to the Federal Endangered Species Act, and currently a candidate for listing before the California Fish and Game Commission under the California Endangered Species Act. The project area and the lower Smith River are mainly important as a stretch for these migrating fish species to transit to and from spawning areas further upstream. Though not a listed species in the project area at this time, Chinook salmon do utilize some of the lower reaches of the Smith River for spawning habitat.

In order for the Commission to find that gravel extraction at the project site is consistent with Sections 30233 and 30231 of the Coastal Act, the gravel extraction operation must be conducted in a manner that does not have significant adverse effects on sensitive fish species that cannot be mitigated, such as coho salmon.

The impacts of a gravel mining operation on sensitive fish species includes more than just the individual impacts of a particular gravel mining operation at one site on the species. Often of greater significance is the cumulative impact of all of the various gravel mining operations occurring along the river on sensitive fish species. Accurately assessing such cumulative impacts of the various gravel mining operations on sensitive fish species can be a difficult task for any one operator to perform.

The first year of the proposed gravel extraction operation is development that is authorized by the Corps of Engineers Letter of Permission (LOP) that was adopted in 1997 and due to expire in March, 2002. The LOP authorized gravel mining along the lower Smith River pursuant to special conditions that limit the manner in which the mining is conducted. One such condition requires that mining plans for each particular year be submitted for the review and administrative approval of the Corps. Although the Corps has not yet completed its review of the applicants' individual mining plan for the 2001 extraction season, the Corps indicates that the applicant's proposed mining is an activity authorized by the LOP subject to the conditions of the permit.

An assessment of the cumulative impacts of Corps of Engineers permitted gravel mining operations along the lower Smith River through the year 2001 under the LOP on sensitive fish species does exist in the form of Biological Opinions issued by the National Marine Fisheries Service over the last several years. These Biological Opinions were issued as a result of formal consultations between the Corps of Engineers and the NMFS pursuant to the Federal Endangered Species Act. These opinions determined that the mining operations authorized by the LOP through 2001 along the lower Smith River were unlikely to jeopardize the continued existence of the sensitive fish species and would result in only incidental take of sensitive fish.

Therefore, the Biological Opinions provide evidence that mining for the first year of the proposed gravel mining operation will not result in significant cumulative adverse impacts on sensitive fish species. However, the existing Biological Opinions do not cover gravel mining on the lower Smith River beyond the expiration of the LOP in March 2002. Therefore, the Biological Opinions do not provide evidence that the mining for the second through fifth years of the proposed gravel mining operation will avoid significant cumulative adverse impacts on sensitive fish species. No other documentation that the proposed gravel mining operation in years after 2001 will avoid significant cumulative adverse impacts on sensitive fish species has been presented to the Commission.

The National Marine Fisheries Service will likely issue a new Biological Opinion on the effects of Lower Smith River gravel mining on sensitive fish species within a year. This new Biological Opinion will be prepared as a result of formal consultations between the Corps of Engineers and NMFS pursuant to the Federal Endangered Species Act on the Corps' proposed issuance of a new LOP to authorize gravel mining for the next several years on the lower Smith River beginning with the 2002 season. This Biological Opinion will likely contain new recommendations on how to limit gravel extraction operations to avoid significant adverse cumulative impacts on sensitive fish species.

In addition, the CDFG's determination as to whether listing the coho salmon as a threatened or endangered species under the CESA is warranted is due in April, 2002. Information from the Corps' formal consultations with the National Marine Fisheries Service regarding protection of the federally listed fish species should be available by that time. The new LOP will consider the new information that has become available since the LOP was originally issued in 1997, including the most recent federal and state listings of threatened and endangered species, and will revise and update the regulations accordingly to ensure maximum resource protection.

Depending on the conclusions of the Biological Opinion and any other information presented at that time, the Commission could consider approving a new application for mining in future years at the site submitted after such information is available.

Until such information is developed, however, the Commission cannot determine that the applicants' proposed gravel mining for years after 2001 will not result in significant cumulative adverse impacts on sensitive fish species that are not adequately mitigated consistent with the requirements of Sections 30231 and 30233 of the Coastal Act. Therefore, the Commission attaches Special Condition No. 2, which states that the authorization for gravel extraction shall terminate on October 1, 2001.

A gravel mining operation could have significant individual impacts on sensitive fish species if the mining is conducted during the time of the year when the sensitive anadromous fish species are migrating past the site.

Gravel mining operations need to be out of the riverbed before the rainy season as the runs of the various species of anadromous fish up and down the river increase in the fall with the rise in river levels and remain at high levels through the early spring.

The CF&GC Section 1603 Streamside Alteration Agreement issued by CDFG for gravel extraction for 2001 at the project site limits gravel extraction operations to June 1 through October 1, with reclamation work to be completed by October 15, the period of the year when potential impacts to fisheries is lowest. Therefore, the Commission attaches Special Condition No. 3 which requires all mining, post-extraction reclamation and closure work, and equipment removal to cease by October 15, 2001 to ensure no significant individual impacts on anadromous fish or their habitat results from the permitted gravel operation.

The Commission finds that the limitations of Special Conditions 1 through 3 will ensure that the approved extraction will not result in significant adverse effects to fisheries.

(b) River Morphology

As discussed above, a potential major impact of gravel mining operations is degradation of the riverbed and erosion of the riverbanks. Such impacts can occur if the amount of gravel extracted from a particular part of the river over time exceeds the amount of gravel deposited on the site through natural recruitment—the downstream movement of sand and gravel materials. Bed degradation and bank erosion can also result from the manner in which gravel is extracted. For example, if gravel bars are skimmed too close to the low-water surface or are left with a very shallow slope, at higher flow stages the river will tend to spread across the bar, reducing the overall depth of flow and resulting in rapid channel migration or instigation of a multi-channel “braided” configuration. This is also true of watercourse reaches where aggradation of materials is a problem. Such sites tend to trap gravel that would otherwise move downstream, potentially trapping or impeding fish migration up and down the river.

The applicants propose to extract a maximum of 60,000 cubic yards of sand and gravel annually from the site. Furthermore, due to low annual recruitment during the 2000-01 winter flows, the applicants are requesting removal of only 12,200 cubic yards during the 2001-02 extraction season, to be excavated under a dry trenching proposal designed in consultation with CDFG staff. Although this amount is small relative to the overall permitted gravel mining activity along the Smith River (up to 390,000 cubic yards annually), extraction without consideration of river morphology concerns could cause bed degradation and riverbank erosion.

Therefore, to ensure that the mineral extraction proposed by the applicants does not degrade the riverbed, the Commission attaches Special Condition No.1. Subsection A of the condition states that the applicants shall extract material only by “dry longitudinal trenching” in a manner that will not occur in the active channel and shall be limited to specified trench locations a minimum of five (5) feet horizontally from the current water’s edge. The requirement will ensure that disturbance of the active channel will be avoided. Given the composition of the aggregate materials along this reach of the river and the “false cohesion” provided by their saturation in river water, a five-foot setback between the river’s edge and the vertical wall of the trench is generally sufficient to prevent collapse of the trench and provide a stable area in which the excavation can be performed. In addition, requiring the trenching to occur in 200-foot-long discrete trench segments, interspersed with 50-foot-wide unexcavated areas, will reduce the erosional forces within the trench associated with rising river waters after the

extraction season has ended. Instead, by using a series of trench cells, the hydrostatic pressures within each trench segment will be muted compared to that which would occur if a single, uninterrupted trench were excavated. This action will prevent head-cutting at both the upper and lower ends of the trenches that could lead to changes in the location of the river's main channel overtime. To further minimize the chances of bed degradation and stream bank erosion and its consequences to existing structures along the river, Special Condition No. 1 states that no gravel extraction shall be performed on the upper 300 feet of the gravel bar.

In his capacity as the County's interim consultant, Dr. Doug Jager, PhD, following attendance at the May 30, 2201 site visit, noted the following general concerns with regard to the proposed Westbrook-Wetherell mining plan (see Exhibit No. 6):

This bar has been skimmed down about as far as it can go. The owners want to create a "dry" longitudinal trench at this site and they want to remove some portion of a mid channel bar. The "dry" longitudinal trench poses a strong risk of altering the channel planform; it would likely initiate channel incising and would significantly interfere with sediment transport processes. The landowner stated that he wanted to remove a portion of the adjacent mid channel bar in order to increase channel flood capacity and take streamflow pressure off of the left bank. The small increase in channel cross section area would not accomplish those objectives but it would impede the replenishment of the adjacent bar surface and depending on the design it could alter flow through the adjacent overflow channel.

In response to these comments, the applicant retained Gerald LaRue, a hydrologist formerly contracted as a mining plan reviewer by the County to respond to Dr. Jager's comments (see Exhibit No. 7). Based upon a review of historical trenching and onsite evaluations of the Woodruff bar morphology, Mr. LaRue found Dr. Jager's concerns to be unfounded. With regard to the concern that trenching could instigate changes to channel morphology, Mr. LaRue states:

It is interesting to note that the left edge of the "dry" trench would be located within five feet of the right edge of the live water trench that was dug in 1996. It can also be noted that there was no evidence of that trench in the cross-section survey in the spring of 1999 and soundings in the thalweg at cross-sections 5+00 and 7+50, in the spring of 2000, show an increase in bed elevation by as much as 0.9 feet...

In comparing the main channel width... I find that right edge of the water at cross-section 5+00 and 7+50 I find that the right edge of water at cross-section 5+00 was at station 215 feet in 1997 and at station 170 feet in 1999. The right edge of water at cross-section 7+50 was at station 230 feet in 1997 and only at station 200 feet in 1999. The water level in 1999 was nearly two feet higher than in 1997. The width of channel was greater in 1997, due to the presence of the trench while the trench no longer existed in 1999. This would suggest that the trenching operation did not alter the "channel platform" (*sic*) as is feared...

A dry trench adjacent to the left (main) river channel poses no threat to the "channel platform". Two previous trenching operations, in this same reach of channel, has (*sic*) demonstrated that there is not danger to the "channel platform" and both operations were conducted in the live stream. Concern was expressed in the meeting on May 1, 2001 that a trench of this type would head cut. This is also an area of no concern, which has been demonstrated in past operations, not only at the Westbrook-Wetherell Bar but on other bars in the Lower Smith River that were previously mentioned...

With respect to concerns raised by Dr. Jager about interference with sediment transport processes, Mr. LaRue continues:

The reason for many gravel harvest operations has been to "interfere with sediment transport processes." Individuals who are familiar with the Lower Smith River are well aware of the dramatic loss of the estuary at the mouth of the river and the decreasing depth of the river below the confluence with Rowdy Creek. Boats were docked and people trolled for fish at the Ship Ashore Resort during the mid 1960's and early 1970's. That is no longer possible today...

To "significantly interfere with sediment transport processes" has been a purpose of gravel removal in order to retard the filling of the estuary for the past eleven years. If the transport of sediments into the estuary is not restricted, the mouth of the Smith River will look like the mouth of the Garcia River, in California, in a very short period of time. The longitudinal trench will be an effective trap for bed load that is being transported from the right channel toward the left channel and presently conveyed downstream.

Accordingly, based on his site assessments, Mr. LaRue concludes that the proposed trench operation would not result in capture of the river channel or impede the recruitment of gravel on the bar.

Moreover, bar-skimming operations proposed for future years at the site that could affect river morphology if not properly conducted is eliminated pursuant to Special Condition No. 2. Therefore, as conditioned, the Commission finds that the above-described extraction limitations imposed by Special Condition Nos. 1 and 2 will avoid riverbed degradation impacts from the project.

(c) Riparian Vegetation

An updated vegetation assessment (NRMCC, 2000) prepared for the project application indicates the presence of three habitat / vegetation types covering the Woodruff Bar as follows:

R2US1 Riverine Unconsolidated Shore 24 acres

Unconsolidated gravels and cobbles that support sparse annual and/or opportunistic vegetation. Probable species composition of white sweet clover (Melilotus alba), English plantain (Plantago lanceolata), dock (Rumex sp.), and Jerusalem oak (Chenopodium botrys).

NPSS1-2 Non-persistent Palustrine Scrub-Shrub 6 acres

Shrub-dominated with woody vegetation in the process of annual revegetation. Associated with slightly elevated locations on the bar where strong current deflections have formed depositional areas. Sitka willow (Salix sitchensis) of 2 to 4 foot-height, 1 to 3 inch diameter dominant, with a few reaching 10 to 15-foot-height with 1 to 3 inch diameters.

PSS1-2 Persistent Palustrine Scrub-Shrub 3 acres

Shrub-dominated with woody vegetation developing into a persistent layer of vegetation at higher parts of the bar due to infrequent scouring along the northeastern side of the bar. Sitka willow (Salix sitchensis) of 10 to 30 foot-height, 1 to 4-inch diameter dominant, with a few Pacific willows (Salix lucida spp. lasiandra). Associated non-native herbaceous layer composed of Himalaya blackberry (Rubus spectabilis), California blackberry (Rubus ursinus), French broom (Genista monspessulana), coyotebrush (Baccharis pilularis), lupine (Lupinus sp.), Jerusalem oak (Chenopodium botrys), wild radish (Raphanus sativus), mugwort (Artemisia douglasiana), English plantain (Plantago lanceolata), Klamath weed (Hypericum

perforatum), bouncing bet (Saponaria officinalis), and orchard grass (Dactylis glomerata).

As discussed under Findings Sections IV.A and IV.E.1 above, the Persistent Palustrine Scrub-Shrub habitat type (PSS1-2) and portions of the Non-persistent Palustrine Scrub-Shrub (NPSS1-2) habitat types contain mature riparian vegetation with habitat values. Thus, the proposed project has the potential to adversely affect environmentally sensitive riparian scrub-shrub vegetation on the Woodruff Bar. As discussed in Findings Section IV.B, the proposed gravel mining operation for 2001 would avoid riparian vegetation that has grown sufficiently large to have significant habitat value. To further prevent disturbances of this habitat, Special Condition Nos. 1 and 4 require that gravel extraction operations not disturb or remove any area of environmentally sensitive vegetation growing on either the gravel bar or the river banks. Moreover, bar-skimming operations proposed for future years at the site that could encroach into the riparian area on the site are eliminated pursuant to Special Condition No. 2. Therefore, as conditioned, the project will avoid disturbance to all of the environmentally sensitive riparian vegetation on the bar.

(d) Water Quality

If properly managed, the proposed gravel operations should not adversely affect the river's water quality. However, excessive or sloppy gravel extraction operations in close proximity to an open streamcourse could adversely impact water quality, and ultimately the biological productivity and fisheries resources of the river. For example, pushing gravel materials or allowing sediment-laden water to drain from the excavation bucket into the river could degrade water quality and biological productivity by increasing the turbidity of the water.

To prevent such occurrences, the Commission attaches Special Condition Nos. 1, 3, 4, and 5. Special Condition No. 1 requires that no excavation be conducted within the active river channel, and that mining equipment be maintained and operated in such a manner as to not allow for release of petroleum products into the river. Special Condition No. 3 requires that all materials be promptly removed from the river after the cessation of mining and prior to the start of the rainy season. Special Condition No. 4 prohibits placing any material into the river during gravel extraction activities. Furthermore, to abate dust generated during mining from entering the river, Special Condition No 5 requires that watering of the bar during mining operations.

As a trenching method is to be used, the applicants are required by Special Condition No. 1 to construct a berm along the entire length of the excavated area between the trenches and the river channel to prevent turbid water from entering the flowing river. After completion of gravel extraction operations, the applicants

would be required by Special Condition 1 to allow turbid water within the trenches to completely settle, skim off with absorbent padding any petroleum products sheen, then breach the trenches at both their downstream and upstream ends to prevent the creation of fish traps. Finally, Special Condition No. 3 requires the applicant to remove the berm and grade the area between the trench and the main river channel to match its pre-extraction slope. Special Condition No. 1 also requires that the mining activities be performed consistent with a runoff control plan designed to prevent and intercept a variety of potential pollutants, including sediment and petroleum products.

Moreover, bar-skimming operations proposed for future years at the site that could result in water quality impacts on the site are eliminated pursuant to Special Condition No. 2. Therefore, as conditioned, the project will avoid significant adverse impacts to coastal water quality.

3. Alternatives

The third test set forth by the dredging and fill policies of the Coastal Act, is that the proposed dredging or fill project must have no feasible less environmentally damaging alternative. In this case, the Commission has considered the various identified alternatives, and determines that there is no feasible less environmentally damaging alternatives to the project as conditioned in Special Conditions 1-8. A total of four possible alternatives have been identified, including: (a) the “no project” alternative; (b) obtaining sand and gravel from quarry operations; (c) obtaining sand and gravel from alluvial terrace deposits in the Smith River floodplain; and (d) modifying the proposed project. As explained below, each of these alternatives are infeasible and/or more environmentally damaging than the proposed project.

(a) No Project Alternative

The no project alternative means that the proposed gravel extraction project would not be undertaken. Without extraction from this site, an equivalent amount of sand and gravel materials would be obtained from other sources to meet regional demand for cement and concrete aggregate products for the construction of roads, buildings, and other development. Increasing production from other river bar extraction operations would have environmental impacts similar or greater than the proposed project.

The proposed project is located in an area where gravel has historically accumulated and been mined. Mining in many other parts of the river where gravel does not accumulate could lead to changes in river geomorphology which, in turn, could cause a variety of adverse impacts such as increase sedimentation, bank erosion, or the undermining of bridge supports, resulting in the loss of environmentally sensitive riparian habitat areas and/or adjacent agricultural lands.

As discussed below, obtaining additional sand and gravel from terrace deposits along the valley floors of local rivers would also create environmental impacts similar to or greater than the proposed project. The Commission therefore finds that the “no project” alternative is not a feasible less environmentally damaging alternative to the project as conditioned.

(b) Obtaining Sand and Gravel from Quarry Operations.

Excavation from the river could be avoided if an equivalent amount of sand and gravel could be obtained from upland quarries. However, there are few quarries in the vicinity where it would be economically feasible to obtain material of sufficient quality and quantity to that available at the project site. Many of the upland areas of Del Norte County are underlain by the Franciscan Formation, comprised of a complex of massive greywacke sandstone, greenstone, and serpentine, interspersed with less competent (for construction applications) clays and silt materials. To produce aggregate products similar to that obtainable from river bars would require extensive screening, crushing, and washing processes. As these quarry sites are generally located in remote areas with limited water supplies and where no nearby processing facilities are available, the unprocessed materials would need to be transported greater distances, with associated traffic and air quality impacts. The Commission therefore finds that substituting gravel extracted from quarry operations is not a feasible less environmentally damaging alternative.

(c) Obtaining Sand and Gravel from Alluvial Deposits.

Excavation from the river could similarly be avoided if an equivalent amount of sand and gravel products could be obtained from alluvial deposits in the floodplain of the lower Smith River. The floodplain of the Smith River is underlain by substantial amounts of sand and gravel deposited over the last several thousand years. However, taking gravel from these alluvial deposits would have its own environmental impacts. Almost all of the Smith River floodplain is devoted to agricultural production and related uses. Converting productive coastal agricultural areas to other uses such as mineral extraction would not be consistent with the Coastal Act policies that call for the protection of agricultural lands. In addition, most of the remaining undeveloped areas in the lower Smith River floodplain are covered by mature riparian vegetation that would be considered environmentally sensitive areas. Extracting gravel from such areas would result in far more impact than would extraction at the project site as conditioned by the permit. The Commission therefore finds that substituting gravel extraction from alluvial floodplain deposits of the lower Smith River is not a feasible environmentally less damaging alternative.

(d) Modifying the Proposed Project as Conditioned.

Various modifications to the project as proposed and conditioned could be made in an attempt to reduce the environmental effects. One such modification would be to mine in different locations at the project site. However, this modification would not result in less impact than the project as conditioned under this permit. As discussed previously, the proposed project has been conditioned to restrict mining to areas that would avoid adverse impacts to coastal resources. Therefore, modifying the proposed gravel extraction project to require mining in different locations at the project site could result in greater impacts on coastal resources and would not create an environmentally less damaging alternative.

No other feasible modification to the proposed extraction scheme has been identified. Therefore, the Commission finds that modifying the proposed gravel extraction project as conditioned is not a feasible less environmentally damaging alternative.

The Commission finds, as conditioned herein, the proposed gravel extraction operation is consistent with the requirements of Section 30233 of the Coastal Act, in that feasible mitigation measures have been provided to minimize adverse environmental effects. The gravel extraction limitations imposed through Special Condition No. 1, designed to prevent impacts to river morphology, riparian vegetation, threatened and endangered species, and water quality, together with the requirements to limit the extraction season and avoid placement of material into the active channel will ensure that the proposed gravel extraction operation will avoid adverse impacts to the Smith River. There, the proposed project, as conditioned, will minimize adverse environmental effects by avoiding such impacts altogether.

4. Maintenance and Enhancement of Estuarine Habitat Values

The fourth general limitation set by Sections 30231 and 30233(a) of the Coastal Act on fill and dredging projects is that any such proposed project shall maintain and enhance the biological productivity and functional capacity of the habitat, where feasible.

As discussed in the section of this finding on mitigation, the conditions of the permit will ensure that the project will not have adverse impacts on water quality, riparian vegetation, rare and endangered species, stream morphology, or other coastal resources. By avoiding impacts to coastal resources, the Commission finds that the project will maintain the biological productivity and functional capacity of the habitat consistent with the requirements of Sections 30231 and 30233 of the Coastal Act.

The Commission thus finds that the project is an allowable use, that there is no feasible less environmentally damaging alternative, that no mitigation is required for the insignificant impacts associated with the dredging of coastal waters, and that estuarine

habitat values will be maintained or enhanced. Therefore the Commission finds that the proposed development, as conditioned, is consistent with Section 30233 of the Coastal Act.

F. Protection of Environmentally Sensitive Habitat Areas.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected. Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreational areas.*

As discussed in Finding IV.A, above, the Woodruff Bar is located adjacent to a well-developed riparian corridor along the edge of the riverbank that is considered an environmentally sensitive habitat area. The proposed project will not adversely affect this riparian habitat. None of the habitat will be disturbed by the extraction operations itself. In addition, existing haul roads through the riparian will be used to truck gravel from the bar to the stockpiling and processing area. No new haul roads are proposed to be cut through the riparian woodland. To ensure that no new haul roads are created through riparian woodland, the Commission attaches Special Condition Nos. 1 and 4 that require that the proposed project not disturb or remove any of the established riparian vegetation at the site and prohibits the cutting of new haul roads through the habitat.

Because the extracted gravel will be loaded directly onto trucks and hauled to the adjoining upland stockpile/processing area and in turn to off-site construction sites or processing facilities, truck traffic during the extraction season could become significant, depending upon the local demand for aggregate materials. Typically, dump trucks of 10 to 15-cubic-yard-capacity are used to transport aggregate materials on surfaced roads. Based on an estimated 7-week, 5-day working week, up to approximately 25 to 35 truckloads of extracted material per day could be expected to transport the full 12,220 cubic yard annual extraction entitlement from the site. The continual passing of trucks could degrade the quality of the riparian habitat by raising dust that would coat parts of the habitat. The impacts of truck traffic could be reduced in part, by controlling the dust problem. Therefore, the Commission attaches Special Condition No. 5 that requires the applicants to regularly water the roadway with the use of a water truck to keep the dust down.

As conditioned, the Commission finds that the project is consistent with Section 30240 of the Coastal Act, as the project will avoid significant adverse impacts to the environmentally sensitive habitat area found on the site.

G. Visual Resources.

Section 30251 of the Coastal Act provides in applicable part that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall: (a) be sited and designed to protect views to and along the ocean and scenic coastal areas, and (b) be visually compatible with the character of surrounding areas.

Due to grade and vegetation screening, the gravel extraction operations will generally not be visible from Highway 101 or Fred Haight Drive, the principal public roads in the area. Glimpses of the extraction operation would be afforded from the northern termini of Lake Earl Drive or Lower Lake Road approximately ¼ mile to the south and ½ mile to the northwest of the project site, respectively. The extraction operation has existed at the site for many years, and many of the approximately half dozen gravel operations occurring along the lower Smith River are similarly visible from public roads. The proposed project will not be any more prominent than the gravel extraction that has occurred in the past. Therefore, the Commission finds that the proposed project is visually compatible with the character of the area as gravel extraction operations here and in the vicinity have long been a part of the viewshed.

To ensure that the Commission would have the opportunity to review any future proposals by the applicants to change other aspects of the project that could affect visual resources in their conformity with Coastal Act Section 30251, the Commission attaches Special Condition No. 7. The condition states that any substantial changes to the proposed operation shall require an amendment of the permit.

Therefore, the Commission finds that, as conditioned, the proposed project is consistent with the visual resource policies of Section 30251 of the Coastal Act as the project is compatible with the visual character of the surrounding area and will not block views to and along the coast.

H. Public Access.

Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to

the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety.

The project site is located between the first public road (Fred Haight Drive) and the sea (the Smith River is considered to be an arm of the sea in this area). Accordingly, a public access finding is required for the project.

In applying Sections 30211 and 30212, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential public access.

Four shoreline access points presently exist within the coastal zone and the lower Smith River (i.e., downstream and west of the Dr. Fine or Highway 101 Bridge). From west to east, these access points are located at: (1) the southerly end of the mouth of the Smith River; (2) the Ship-a-Shore resort; (3) the southerly end of Sarina Road; and (4) the County-owned Smith River Fishing Access Point $\frac{3}{4}$ mile upstream of the project site near the Bailey Gravel Bar. There is no evidence of potential prescriptive rights within the project area.

Recreational use of the lower Smith River is extensive. The principal public access use of the project site that does occur is by fishermen who go out to the river channel for recreational fishing. Other public access and recreational uses of this stretch of the river include canoeing and kayaking. The prime fishing seasons occur during the wet months, when gravel extraction is not occurring. The peak canoeing and boating use takes place during the spring before the gravel extraction season begins. Moreover, mining operations are confined to the exposed Woodruff Bar with access occurring across the seasonally dry, high-water channel along the bar's northern side. Accordingly, for any recreational boaters using the river during the extraction season, the main river along the south side of the bar will remain open for water travel through this reach.

Thus, the project will not significantly affect the fishermen, canoeists, or other recreational boaters. Furthermore, gravel extraction operations have been occurring at the site for many years. The continued extraction authorized by this permit will not create any additional burdens on public access than have existed in the past. The project will not create any new demands for fishing access or other public access use.

Therefore, the proposed project would not have any adverse effects on public access. The Commission finds that the project, which does not include any new public access is consistent with the public access policies of the Coastal Act.

I. State Lands Commission Review.

The project is located in the bed of the Smith River, a navigable river, between the ordinary high water marks. As such, the State of California may hold a public trust easement and other property interests in the site. Any such property interest of the State would be administered by the State Lands Commission (SLC).

SLC staff have reviewed the proposed project and have provided a response regarding the public interests over the site (see Exhibit No. 6). Due to staff and funding limitations, the extent of the State's sovereign interest at the project location has not been determined. Although SLC staff indicates that no SLC authorization will be required at this time, the SLC reserves the right to re-examine the line of tidal influence and to require a mineral extraction lease if the facts justify it. Therefore, State lands may be involved in the development, but the applicants have demonstrated a sufficient legal property interest in the site to carry out the project and to comply with the terms and conditions of this permit.

J. Department of Fish and Game Review.

The project requires an annual CF&GC Section 1603 Streambed Alteration Agreement from the CDFG. The applicants have received an agreement for the 2001 gravel extraction season on July 2, 2001 (see Exhibit No. 6).

K. U.S. Army Corps of Engineers Review.

The project is within and adjacent to a navigable waterway and is subject to review by the U.S. Army Corps of Engineers (USACE). Pursuant to the Federal Coastal Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the USACE, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit.

In 1996, the Corps issued a Letter of Permission (LOP) for gravel mining on the lower Smith River, and the project is covered by the LOP. The LOP stipulates that annual mining plans are to be submitted for review and approval by the Corps. On July 23, 2001, the Corps approved the mining plan for 2001 and issued a Letter of Modification to the applicant's standing LOP permit to authorize the proposed dry trenching operation. The permit modification has been conditioned upon the applicant obtaining a coastal development permit from the Commission and Federal Clean Water Act Section 401 water quality certification from the Regional Water Quality Control Board prior to beginning any in-stream work (see Exhibit No. 6).

L. California Environmental Quality Act.

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would significantly lessen any significant effect that the activity may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the Coastal Act, the proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act. As specifically discussed in these above findings which are hereby incorporated by reference, mitigation measures which will minimize all adverse environmental impact have been required. These required mitigation measures include requirements that limit extraction to avoid environmentally sensitive habitat areas, rare and endangered species, migratory fish, and extractions that could lead to changes in river morphology. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

IV. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Jurisdictional Map (excerpt)
4. Project Description and Mining Site Plans
5. Vegetation Assessment and Map
6. Agency Review Correspondence
7. General Correspondence

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.